

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AMERICAN CENTURY HOME FABRICS, INC.,

Plaintiff,

v.

SOFA MART, LLC

Defendant.

Civil Action No. 11-CV-336

COMPLAINT

Plaintiff American Century Home Fabrics, Inc. (“American Century”), by its attorneys and for its Complaint against Defendant Sofa Mart, LLC (“Sofa Mart”), alleges as follows:

THE PARTIES

1. American Century is a North Carolina corporation with a place of business at 5200 S. Main Street, Salisbury, North Carolina.

2. On information and belief, Sofa Mart is a Colorado corporation with a place of business at 5671 Broadway, Denver, Colorado.

JURISDICTION AND VENUE

3. This is a civil action for injunctive relief and damages for violation of the copyright laws of the United States, 17 U.S.C. § 101, *et seq.*

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338.

5. This Court has personal jurisdiction over the Defendant because it has offered for sale, sold, caused to be sold, or taken actions leading to the sale in Wisconsin of products that infringe American Century’s copyright in its LOUISE 19C fabric design (*see below*).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391, 1400.

PLAINTIFF'S COPYRIGHTED FABRIC DESIGN

7. American Century is a major manufacturer and converter of popular priced upholstery and multi-purpose fabrics for use in furniture and home furnishings. American Century is also a significant “cut and sew” resource for major retailers in the United States, which involves the production of fabrics that are cut, sewn, and ready for assembly onto furniture frames by other companies.

8. American Century is the owner of the copyright in a design pattern called JST431, also known as LOUISE 19C (“the “LOUISE 19C design”). An image of the LOUISE 19C design is reproduced below in the “Bark” color scheme:



American Century's Copyrighted LOUISE 19C design

9. On November 4, 2005, American Century received a United States Copyright registration, Registration No. VA-1-325-032, in the LOUISE 19C design. A copy of the copyright registration is attached to this Complaint as Exhibit A.

10. Since its introduction to the marketplace on fabric in 2003, the LOUISE 19C design has been an excellent seller for American Century for use in upholstering furniture, and it has become well known in the fabric design and furniture industry. It is available in a variety of color schemes, the most popular of which is “Bark.” It is known in the industry that the LOUISE 19C design is a popular fabric with customers. The LOUISE 19C design has been one of American Century’s best selling fabric designs. American Century has sold hundreds of thousands of yards of fabric containing the LOUISE 19C design.

11. When American Century displays samples of its LOUISE 19C fabric for sale, those samples include a notice indicating that the fabric design is copyrighted to American Century.

12. American Century takes care that the fabrics it sells, including fabrics containing the LOUISE 19C design, meet the highest standards for quality in the industry.

**DEFENDANT SOFA MART’S UNAUTHORIZED
USE OF PLAINTIFF’S FABRIC DESIGN**

13. Sofa Mart is a furniture manufacturer that supplies furniture stores throughout the United States.

14. Sofa Mart has sold furniture under the trade name “Newman” (“The Newman Line”).

15. Sofa Mart has sold the Newman Line on its website and in its stores.

16. Sofa Mart's Newman Line has included a sofa, loveseat, upholstered chair, and ottoman.

17. The items of the Newman Line have been sold by Sofa Mart individually and grouped together.

18. The Newman Line's sofa and loveseat have been sold and offered for sale with throw pillows.

19. The Newman Line sofa (including throw pillows), loveseat (including throw pillows), upholstered chair, and ottoman ("the Infringing Items") have been upholstered with a fabric that is a direct copy of American Century's LOUISE 19C design.

20. An image of the Newman Line sofa, including throw pillows, is shown below:



The Newman Line Sofa

21. An image of the Newman Line loveseat, including throw pillows, is shown below:



The Newman Line Loveseat

22. An image of the Newman Line upholstered chair is shown below:



The Newman Line Upholstered Chair

23. An image of the Newman Line ottoman is shown below:



The Newman Line Ottoman

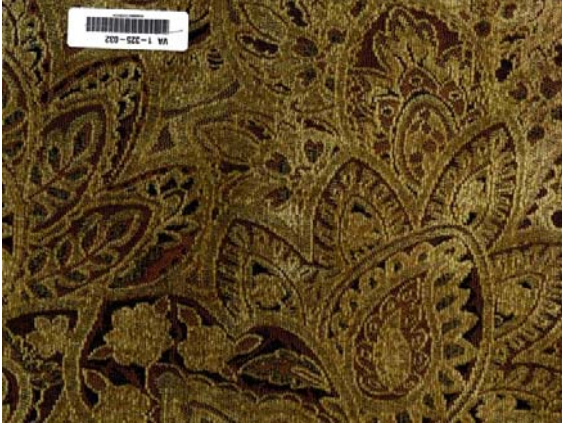
24. Images of the upholstery from the Newman Line are reproduced below, alongside American Century's copyrighted LOUISE 19C fabric:



**American Century's
Copyrighted LOUISE 19C Design**



Sofa Mart's Infringing Fabric



**American Century's
Copyrighted LOUISE 19C Design**



Sofa Mart's Infringing Fabric

25. The Newman Line's fabric design is identical or substantially similar to the LOUISE 19C copyrighted design owned by American Century.

26. At no time did American Century license Sofa Mart to make, use, or copy its LOUISE 19C design.

27. Sofa Mart has imported, manufactured, and/or sold products with a fabric pattern that infringe the LOUISE 19C copyright.

28. Sofa Mart has sold, caused to be sold, or taken actions leading to the sale of one or more products upholstered with the infringing fabric design.

29. Sofa Mart could not have created such a design without directly copying American Century's LOUISE 19C design.

30. Sofa Mart has willfully infringed American Century's copyright in its LOUISE 19C design.

31. Sofa Mart continues to sell the Infringing Items.

COUNT I
(Copyright Infringement)

32. American Century repeats and re-alleges the allegations of the paragraphs above as though fully set forth herein.

33. Sofa Mart has infringed American Century's copyright in the LOUISE 19C fabric design, in violation of 17 U.S.C. § 501, by copying and using the LOUISE 19C design without any license.

34. Sofa Mart's infringement has been knowing and willful.

35. Sofa Mart's infringement has damaged American Century, in an amount to be proven at trial.

36. Without injunctive relief, Defendant will continue infringing American Century's copyright in the LOUISE 19C design and continue damaging American Century.

RELIEF REQUESTED

WHEREFORE, American Century requests that this Court:

A. Preliminarily and permanently enjoin Defendant, including its partners, officers, agents, servants, employees, attorneys, and all those persons and entities in active concert or participation with Defendant, from further infringement of the copyright in and to the LOUISE 19C design, pursuant to 17 U.S.C. § 502.

B. Order the recall, impounding and destruction of all infringing copies made, used or distributed by Defendant in violation of American Century's exclusive rights in and to its LOUISE 19C design (and, in the case of any electronic copies, order that all such copies be deleted from the computers or other storage means on which they reside), pursuant to 17 U.S.C. § 503.

- C. Order Defendant to pay to American Century its actual damages and any additional profits realized by Defendant, pursuant to 17 U.S.C. § 504.
- D. Order that, in the alternative to actual copyright damages, at American Century's election, Defendant shall pay American Century statutory damages pursuant to 17 U.S.C. § 504.
- E. Enter judgment that Defendant's copyright infringement has been knowing and willful.
- F. Award American Century attorney fees and costs incurred in prosecuting this action, pursuant to 17 U.S.C. § 505, or otherwise.
- G. Award American Century such further relief as this Court may deem just and proper.

JURY DEMAND

American Century hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

Dated: May 16, 2011.

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